

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

BARBARA A. COLLIER
(AKA BOLTON),

Plaintiff,

vs.

MICHAEL J. ASTRUE, Commissioner
of Social Security Administration,

Defendant.

CASE NO. CV 06-04062 RZ

MEMORANDUM OPINION
AND ORDER

Plaintiff appeals from a partial denial of her claim for disability benefits. The Administrative Law Judge did find that Plaintiff was disabled, but not until her 50th birthday on April 26, 1997, when “the Grids” dictated such a decision based on her age, education level, skill set and sedentary work restriction. *See* Administrative Record (“AR”) 381; 20 C.F.R. Part 404, Subpart P, Appendix 2, Rule 201.09 (2006). Plaintiff’s appeal is limited in scope to the time frame between March 21, 1996 (the date of her application) and her 50th birthday. She contends that she was unable to perform even sedentary work – that she was instead entirely disabled by physical and mental impairments – during that period. Because the Court agrees in part with Plaintiff’s challenge, it will remand.

1 The underlying opinion, at AR 379-83, mentions only two physicians of the
2 many whose examination records appear in the record. (Nor does a summary of the
3 unnamed sources' observations appear in the opinion.) One of these doctors is consultative
4 examiner Kalpana Ravikumar, M.D., who diagnosed various ailments, including
5 hypertension, obesity, tendinitis in both shoulders and costochondrodritis. Despite
6 Plaintiff's complaints of "bone pain all over" and disabling, "generalized chronic pain,"
7 Dr. Ravikumar opined that Plaintiff could sit, stand, walk and otherwise perform tasks
8 consistent with sedentary work. *See* AR 380, 382, 255-60. The second physician
9 mentioned in the opinion is the medical expert who testified at the administrative hearing,
10 William Cable, M.D., although his views were cited only to discount Plaintiff's assertions
11 of mental impairments, including "chronic pain syndrome." *See* AR 381. Thus, the only
12 medical source whose evidence was expressly discussed in the underlying opinion as to
13 *physical* impairments was Dr. Ravikumar; and the only source discussed as to
14 *mental* impairments was Dr. Cable.

15 Plaintiff faults the opinion for failing to discuss numerous other sources'
16 observations, which she asserts tend to show that she was disabled on her application date
17 by arthritis and other chronic pain, complicated by obesity, and by depression. The Court
18 partially agrees, as discussed below.

19 As to physical ailments, the Commissioner responds to Plaintiff's failure-to-
20 discuss argument in three ways. The first is that Plaintiff has not established functional
21 limitations resulting from the physical maladies noted in the undiscussed reports, citing to
22 *Mathews v. Shalala*, 10 F.3d 678, 680 (9th Cir. 1993), for the proposition that the existence
23 of a diagnosed impairment does not mean that a person is disabled. But that misses the
24 issue. The issue instead is whether the Administrative Law Judge considered the medical
25 evidence. "[I]n interpreting the evidence and developing the record, the ALJ does not need
26 to 'discuss every piece of evidence.'" *Howard ex rel. Wolff v. Barnhart*, 341 F.3d 1006,
27 1012 (9th Cir. 2003), *citing Black v. Apfel*, 143 F.3d 383, 386 (8th Cir. 1998), and *Vincent*
28 *v. Heckler*, 739 F.2d 1393, 1394-95 (9th Cir. 1984). But if he is not to consider significant

1 evidence, he needs to say why. *Vincent v. Heckler*, 739 F.2d 1393, 1395 (9th Cir. 1984),
2 citing *Cotter v. Harris*, 642 F.2d 700, 706 (3d Cir. 1981). The Administrative Law Judge
3 did not do so here (and the Court believes that at least some of the undiscussed sources'
4 observations constitutes significant evidence, contrary somewhat to Defendant's second
5 and third arguments below).

6 Second, Defendant asserts that any error in not mentioning numerous sources'
7 examinations pertaining to *physical* ailments was harmless because, even if credited, those
8 reports "certainly do not describe any limitations beyond sedentary work." Def.'s Br. at
9 4. The Court is not as certain as Defendant. Perhaps the undiscussed reports help
10 Plaintiff's case sufficiently that she should succeed on her claim, and perhaps they do not.
11 The difficulty, again, is that it is unclear from the opinion whether the Administrative Law
12 Judge took those reports into account at all.

13 Third, as to mental impairments, Defendant asserts that any error in not
14 discussing reports from numerous sources – including notes about Plaintiff's
15 hospitalization and counseling sessions – is harmless because none of those reports, even
16 if credited, shows anything more than a *temporarily* disabling condition, *i.e.*, one lasting
17 less than 12 months. *See id.* at 5-6. Although it appears true that mental-health source
18 records submitted by Plaintiff shows no *single* episode during which Plaintiff was clearly
19 disabled for a year or more, the Court remains troubled that the underlying opinion did not
20 mention those records. It is possible that express consideration of those records, weighed
21 against the non-disability opinion of Dr. Cable, properly will result in another non-
22 disability finding. But it is also possible that such consideration will yield a finding that
23 Plaintiff's numerous episodes of mental-health treatment in the mid-1990s, considered
24 collectively, rendered her unable to work prior to her 50th birthday.

25 The Administrative Law Judge must consider the combined effects of
26 impairments, *Howard v. Wolff, supra*, and it is reasonable to assume that some of the
27 impairments here may be related, including hypertension, obesity and possibly Plaintiff's
28 complaints of persistent joint pain. *See, e.g. Celaya v. Halter*, 332 F.3d 1177 1182 (9th Cir.

1 2003) (Administrative Law Judge must consider interactive effect of obesity with
2 hypertension and diabetes); *but see Burch v. Barnhart*, 400 F.3d 676 (9th Cir. 2005)
3 (appearing to limit *Celaya*'s scope). Although it is possible that the Administrative Law
4 Judge did *consider* the numerous items of evidence to which Plaintiff now points, the Court
5 cannot so conclude, for none of them was *addressed* in the Administrative Law Judge's
6 decision (except obesity, of which Dr. Ravikumar and the underlying opinion did take note,
7 *see* AR 256 (beginning a description of Plaintiff as "Obese female"), 257 (including
8 "obesity" as second of seven "Impressions"), 380), and the Administrative Law Judge did
9 not state why he was *not* addressing these matters.

10 The Administrative Law Judge is not a doctor, *Day v. Weinberger*, 522 F.2d
11 1154, 1156 (9th Cir. 1975), and it appears to this Court that a medical expert once again
12 will prove necessary to evaluate the medical evidence in the record. *See, e.g., Manso-*
13 *Pizarro v. Secretary of Health and Human Services*, 76 F.3d 15, 17 (1st Cir. 1996). On
14 remand, the Court recommends that the Administrative Law Judge again employ such an
15 expert.

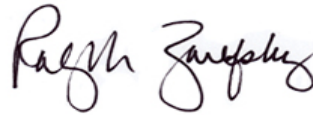
16 Plaintiff also challenges the Administrative Law Judge's determinations as to
17 her credibility. The Court cannot tell whether those findings would be sustainable, because
18 the further consideration of the combined effect of impairments, and the possibly different
19 testimony of the medical expert on remand, may place the Plaintiff's statements as to her
20 ability and subjective symptoms in a different light. Similarly, given the Court's foregoing
21 determination to remand, Plaintiff's remaining arguments – such as her assertion that the
22 Administrative Law Judge accorded too little weight to the opinions of various treating
23 sources, and too much to consultative examiner Dr. Ravikumar and medical expert Dr.
24 Cable – are moot. Accordingly, the Court makes no ruling on these issues at this time.
25 On remand, the Administrative Law Judge should revisit these matters if appropriate to do
26 so on the basis of further evidence.

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1 In accordance with the foregoing, the decision of the Commissioner is
2 reversed, and the matter is remanded for further proceedings consistent with this
3 Memorandum Opinion.

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5 DATED: September 10, 2007

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8 RALPH ZAREFSKY
9 UNITED STATES MAGISTRATE JUDGE
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